

1 MICHAEL J. O'TOOLE (SBN 97779)  
2 City Attorney  
3 RANDOLPH S. HOM (SBN 152833)  
4 Assistant City Attorney  
5 CITY OF HAYWARD  
777 "B" Street  
Hayward, California 94541  
Telephone: (510) 583-4450  
Facsimile: (510) 583-3660

6 Attorneys for Defendants City of Hayward,  
Art Thoms, Scott Lunger, and Zachary Hoyer

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 KEVIN WALKER, ) Case No.: C 07 -06205 (TEH)  
2 Plaintiff, )  
3 -vs- ) DECLARATION OF RANDOLPH S.  
4 CITY OF HAYWARD, OFFICER ART ) HOM  
5 THOMS, OFFICER SCOTT LUNGER, and )  
6 OFFICER ZACHARY HOYER, )  
7 individually and their official capacities; )  
8 AMERICAN DISCOUNT SECURITY; and )  
9 DAVID WARDAK aka DAVID WARDUK, )  
10 Defendants.  
11  
12  
13  
14  
15  
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**DECLARATION OF RANDOLPH S. HOM**

I, RANDOLPH S. HOM, do hereby declare that I am licensed to practice before the  
United States District Court, Northern District, and that I have personal knowledge of the facts  
set forth herein, except those facts set forth on information and belief, and that if called as a  
witness in this case, I could and would competently testify as follows:

23       1. I am an attorney with the City of Hayward City Attorney's Office, and our office  
24 is responsible for handling the defense of the City of Hayward ("City"), Art Thoms, Scott  
25 Lunger, and Zachary Hoyer in the within action.

20           2. Attached hereto as Exhibit B is a true and correct copy of plaintiffs' claim  
21 presented to the City on December 4, 2007, which is part of the City's official records, and is  
22

1 also referenced in defendants' motion to dismiss which is filed concurrently with this request for  
2 judicial notice.

3           3. Attached hereto as Exhibit C is a true and correct copy of the City's Notice of  
4 Rejection of Claim issued to plaintiff's counsel, Jivaka Candappa, via United States mail, on  
5 December 20, 2007, which is part of the City's official records, and is also referenced in  
6 defendants' motion to dismiss which is filed concurrently with this request for judicial notice.

I declare under penalty of perjury pursuant to the laws of the United States of America  
that the foregoing is true and correct.

10 EXECUTED on this 2nd day of January 2008, at Hayward, California.

11

/S/

RANDOLPH S. HOM

1 JIVAKA CANDAPPA, (SBN 225919)  
2 46 Shattuck Square, Suite 15  
3 Berkeley, CA 94704609  
Telephone: (510) 981-1808  
Facsimile: (510) 981-1817

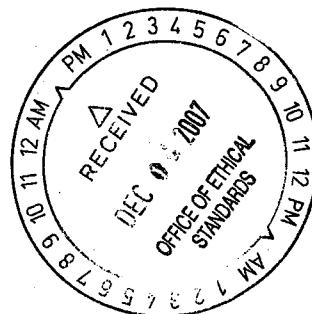
12/04/07 12:23 CLK

cc: Risk Management  
PD/Internal Affairs ✓  
fwd: 12/4/07 ml

5 Attorney for Claimant, KEVIN WALKER

7 CLAIM OF KEVIN WALKER,  
8 against  
9 CITY OF HAYWARD

**CLAIM FOR PERSONAL INJURY**



14 TO THE HAYWARD CITY COUNCIL:

15 Claimant, Kevin Walker, whose address is 2626 Alvin Groom Court, Apartment 1B,  
16 Oakland, California 94605, claims damages from the City of Hayward in an amount that  
17 exceeds \$10,000 for personal injury caused by and arising out of the actions of the City of  
18 Hayward employees. Jurisdiction over this claim would rest in the Superior Court of Alameda  
19 County. This matter is one of unlimited jurisdiction, is not a limited civil case, and would  
20 further implicate questions of federal law.

21 To the best of Claimant's knowledge, the first date of damage and/or injury occurred on  
22 December 9, 2005, as set forth more fully below. The damage and injury occurred at the *Jack*  
23 *in the Box* Restaurant, 1075 W. Tennyson Road, Hayward, California 94544; and offices of the  
24 City of Hayward Police Department. Although the incident set forth below occurred on  
25 December 9, 2005, the operative date for Claimant's tort claims of Malicious Prosecution and  
26 Abuse of Process is June 15, 2007, the date Claimant was acquitted by a jury of all criminal  
27 charges filed against him. See e.g., *Scannell v. County of Riverside*, 152 Cal.App.3d 596  
28 (1984).

## **CIRCUMSTANCES OF DAMAGE AND INJURY**

In the nighttime hours of December 5, 2005, Claimant, Kevin Walker, and his friend, Jerry Walker, both African-American males, went to a *Jack in the Box* restaurant located at 1075 W. Tennyson Road in the City of Hayward, California. As Claimant and his friend attempted to enter the restaurant, the security guard advised them that the restaurant was closed and locked the door. Claimant and his friend next walked to the drive through window of the restaurant, which was open, and attempted to purchase food at the drive through window. Claimant and his friend were refused service.

9 As Claimant and his friend were waiting for their ride, a dark-colored vehicle pulled  
10 into the premises of *Jack in the Box* and two white males exited the vehicle. Without  
11 identifying themselves, the white males ordered Claimant and his friend to the ground.  
12 Immediately thereafter, the white males, who were later identified as officers of the Special  
13 Duty Unit of the Hayward Police Department, attacked Claimant and his friend.

14 The two officers, Officer ART THOMS (#428, TA5598) and Officer S. LUNGER  
15 (#314, LS1916) punched Claimant and pepper-sprayed him in the face. Other officers, namely,  
16 Sergeant KOLLER, Sergeant KEENER, Officer SNELL (#429, SJ9506) and Officer HOYER  
17 also joined in, provided assistance, supervised, directed and/or ratified the officers' acts and  
18 omissions. As a result of the officers' vicious and unprovoked attack, Claimant suffered a  
19 lacerated chin, a bloody nose and blurred vision.

20 Claimant was handcuffed, arrested and transported to the Hayward Police Department  
21 Jail where he was held in custody until his release on bail the next day. In order to justify the  
22 unprovoked attack on Claimant and his friend, the arresting officers reported that Claimant and  
23 his friend physically resisted the officers and attacked them.

24 On or about December 12, 2005, the Alameda County District Attorney's Office filed  
25 misdemeanor criminal charges against Claimant alleging violations of California Penal Code:  
26 (a) Section 69, resisting a Peace Officer; (b) Section 647(f), public intoxication; and (c) Section  
27 12020(a)(4), carrying a dirk and dagger.

28 Claimant's case was tried before a jury in Alameda County. On or about June 15, 2007,

1 Claimant was acquitted on all counts after a jury trial.

2 The City of Hayward is responsible for Claimant's injuries because the acts and or  
 3 omissions as alleged here give rise to causes of action or claims on behalf of Claimant which  
 4 include, but are not limited to:

- 5 1. Malicious Prosecution.
- 6 2. Abuse of Process.
- 7 3. 42 U.S.C. § 1983
- 8 4. 42 U.S.C. § 1985
- 9 5. 42 U.S.C. § 2000d

10 In this regard, causes of action for Malicious Prosecution and Abuse of Process accrue  
 11 from the date of Claimant's exoneration in the underlying criminal proceeding. *See e.g.*,  
 12 *Scannell v. County of Riverside*, 152 Cal.App.3d 596 (1984).

#### 13 **NAMES OF INVOLVED COUNTY EMPLOYEES**

- 14 • Officer ART THOMS (#428, TA5598), Hayward Police Department
- 15 • Officer S. LUNGER (#314, LS1916), Hayward Police Department
- 16 • Officer J.SNELL (#429, SJ9506), Hayward Police Department
- 17 • Officer HOYER, Hayward Police Department
- 18 • SERGEANT KEENER, Hayward Police Department
- 19 • SERGEANT KOLLER, Hayward Police Department.

20 \* Other employees of the City of Hayward whose identities are unknown at this time.

#### 21 **CLAIMANT'S INJURIES AND DAMAGES**

- 22 • Mental pain, humiliation, suffering.
- 23 • Compensatory damages
- 24 • Out-of-pocket expenses
- 25 • Attorneys' fees
- 26 • Statutory damages
- 27 • Punitive damages
- 28 • Injunctive relief

**DEMAND FOR PRESERVATION OF EVIDENCE**

This demand constitutes notice that litigation in this matter is probable under federal and state law. The City of Hayward, its employees, agents, contractors, assigns, partners, and respective attorneys are obligated to preserve and maintain all evidence, documents, and tangible and intangible materials, including electronic records, which are relevant or likely to lead to discovery of relevant evidence and bearing on the subject matter of this Claim during the pendency of this matter, up to and through the completion of any and all civil litigation. Claimant's demand for preservation of evidence includes, but is not limited to, a demand that all police department and/or other public safety communications tapes, surveillance tapes and other evidence retrieved by or in the possession, custody or control of City of Hayward and its affiliated entities be maintained and preserved.

**OFFICIAL NOTICES AND CORRESPONDENCE**

All communication in connection with this claim must be submitted to Attorneys for Claimant as follows:

Jivaka Candappa, Attorney at Law  
46 Shattuck Square, Suite 15  
Berkeley, CA 94704  
Tel: (510) 981-1808  
Fax: (510) 981-1817

DATED: December 1, 2007

By   
JIVAKA CANDAPPA, Attorney at Law  
for Claimant, KEVIN WALKER



CITY OF  
**HAYWARD**  
HEART OF THE BAY

**NOTICE OF INSUFFICIENCY OF CLAIM**

Jivaka Candappa, Attorney at Law  
46 Shattuck Square, Suite 15  
Berkeley, CA 94704

Re: Claimant(s): Kevin Walker  
Claim No: 07123

NOTICE IS HEREBY GIVEN that the claim you presented against the City of Hayward, California, a municipal corporation, fails to comply substantially with the requirements of California Government Code, Sections 910 and 910.2, or is otherwise insufficient, for the reasons checked below:

- 1. The claim fails to state a cause of action against City of Hayward.
- 2. The claim you presented to the City of Hayward on December 4, 2007, is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time is to apply without delay to the City of Hayward for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

- 3. The claim fails to state the name and post office address of claimant.
- 4. The claim fails to state the post office address to which the person presenting the claim desires notice to be sent.
- 5. The claim fails to state the date, place, or other circumstances of the occurrence or transaction which gave rise to the claim asserted.

**OFFICE OF THE CITY ATTORNEY**

777 B STREET, HAYWARD, CA 94541-5007

TEL: 510/583-4450 • FAX: 510/583-3660 • TDD: 510/247-3340

EXHIBIT B

- 6. The claim fails to state the name(s) of the public employee causing the injury, damage, or loss, if known.
- 7. The claim fails to state the amount claimed as of the date of presentation, the estimated amount of any prospective injury, damage or loss so far as known, or the basis of computation of the amount claimed.
- 8. The claim is not signed by the claimant or by someone on claimant's behalf.
- 9. The claim does not comply with Government Code, Section 910(f), as to the amount sought or the court of appropriate jurisdiction.
- 10. Other:

**WARNING:** A claim that does not contain sufficient information required by law may not be considered to have been filed in a timely manner and may prevent the prosecution of a lawsuit based on the incident which is the subject of the claim.

Pursuant to Government Code, Section 910.8, no action will be taken on this claim for a period of 15 days after the date of this notice. Therefore, if you wish to file an amended claim correcting these deficiencies, you should do so within that time period.

Dated: December 20, 2007

City Clerk of the City of Hayward

By: Marie Lewis  
Deputy City Clerk

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

I am over the age of 18 and not a party to the action; my business address is 777 "B" Street, Hayward, CA 94541-5007; I am employed in Alameda County, California.

On December 20, 2007, I served the attached **NOTICE OF INSUFFICIENCY OF CLAIM** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Jivaka Candappa, Attorney at Law  
46 Shattuck Square, Suite 15  
Berkeley, CA 94704

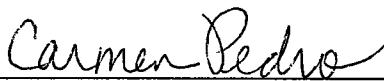
[X] **(BY MAIL)** I am readily familiar with this business' practice for collection and processing of correspondence for mailing, and that correspondence will be deposited with the U.S. Postal Service with postage fully prepaid on the date herein above in the ordinary course of business at Hayward, California.

[X] **(STATE)** Under the laws of the State of California.

[ ] **(FEDERAL)** I declare that I am employed in the office of a member of the bars of this Court at whose direction the service was made.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on December 20, 2007, at Hayward, California.

  
\_\_\_\_\_  
Carmen Pedro